

Memo

To: Dana J. Reed, Town Manager
Town of Bar Harbor

From: Joan M. Fortin, Esquire

Cc: Lee K. Bragg, Esquire

Date: June 15, 2001

Re: Charter Revision Procedures Required By Maine Statutes

I understand that the Town of Bar Harbor has decided to revise its town charter. The procedures the Town will need to follow and the deadlines the Town will need to meet are set forth in the Maine Statutes at 30-A M.R.S.A. §§ 2101-2109 (1996). This memorandum will summarize the procedures and time limits with which the Town of Bar Harbor will have to comply over the coming months as it works toward a final revision of the charter.

I. Establishment of a Charter Commission:

The decision to revise the Town's charter can be initiated by the municipal officers (i.e., the Town Council) who, by order, may provide for the establishment of a charter commission. 30-A M.R.S.A. § 2102(1). Alternatively, the decision to revise the Town Charter can be initiated by the petition of a specified number of voters from the Town. 30-A M.R.S.A. § 2102(2)-(4).

Within 30 days after the adoption of a Town Council Order establishing a charter commission or after receipt of a certificate or final determination that a voter petition to establish a charter commission is sufficient, the municipal officers must by order submit to the voters the question of whether to establish a charter commission. *Id.* § 2102(5). This question must be submitted to the voters at the next regular or special municipal election, which must occur at least 90 days after the Town Council Order to submit the question to the voters. *Id.* The

question that Bar Harbor must submit to the voters at the municipal election, in substance, must ask:

“Shall a Charter Commission be established for the purpose of revising the Municipal Charter or establishing a New Municipal Charter?”

30-A M.R.S.A. § 2102(5)(A).

II. Charter Commission Membership and Organization:

Elected Members

The Charter Commission must consist of both elected and appointed members, and the elected Commission members must be voters in the Town. 30-A M.R.S.A. § 2103(1). The elected members must be elected by one of the following two methods:

- (a) Six (6) voter members must be elected in the same manner as the municipal officers are elected, except that they must be elected at large and without party designation; or
- (b) One (1) voter must be elected from each voting district or ward in the same manner as the municipal officers are elected, except they must be elected without party designation.

30-A M.R.S.A. § 2103(1)(A). The election of the elected members of the Charter Commission may be held at the same municipal election as the election at which the voters decide whether to create a charter commission to revise the charter (the “referendum election”). *Id.* If the election of the Charter Commission members is not held at the same time and the referendum election, the election of Commission members must take place within 90 days after the referendum election. *Id.*

The names of the candidates must be arranged on the ballot alphabetically by last name. *Id.* If the two elections take place at the same time, the names of the candidates must appear immediately below the question relating to the establishment of a charter commission. *Id.*

Appointed Members

The Charter Commission must have three (3) appointed members. 30-A M.R.S.A. § 2103(1). The appointed members of the Charter Commission do not have to be residents of Bar Harbor. *Id.* § 2103(1)(B). Only one member of the Charter Commission may be a municipal officer. *Id.* The municipal officers must make the appointments to the Charter Commission within 30 days following the referendum election approving the establishment of the Charter Commission, and the municipal officers must make the appointments in accordance with Bar Harbor’s custom or bylaws governing municipal appointments. *Id.*

Organization

Immediately after receiving notice that the municipal officers appointed the three appointed members to the Charter Commission, the Town Clerk must notify both the appointed and elected members of the Charter Commission of the date, time and place of the Charter Commission's organizational meeting.¹ 30-A M.R.S.A. § 2103(2). The Town Clerk must set the date, time and place of the meeting and give at least 7 days' notice of the meeting. *Id.*

The newly formed Charter Commission must organize by electing from its members a chairperson, vice-chairperson and a secretary. The Charter Commission must then file notice of the results of these elections with the Town Clerk. *Id.* The municipal officers must promptly fill any vacancies that occur among the appointed Commission members, and the Charter Commission must vote to elect a voter of the Town to fill any vacancies occurring among the elected members of the Commission. *Id.* Charter Commission members must serve without compensation, but must be reimbursed for expenses lawfully incurred by them in the performance of their duties. *Id.*

Regulations, Staff and Funding

The Charter Commission may adopt regulations governing the conduct of its meetings and proceedings and may, within the limits of its budget, employ any necessary legal, research, clerical or other employees and consultants. 30-A M.R.S.A. § 2103(3).

The Town must provide the Charter Commission, free of charge, with suitable office space and with reasonable access to facilities for holding public hearings. 30-A M.R.S.A. § 2103(4). The Town must also permit the Commission to consult with and obtain advice and information from municipal officers, officials, and employees during ordinary working hours. *Id.* The Town may (but is not required to) contribute clerical and other assistance to the Commission. *Id.*

Within 20 days after the Charter Commission members have been elected and appointed, the Town must credit \$100 to the charter commission account. 30-A M.R.S.A. § 2103(4). The Town, from time to time, may appropriate additional funds to the charter commission account, which funds may be raised by taxation, borrowed or transferred from surplus. *Id.*

In addition to the funds provided by the Town, the Charter Commission may accept funds from any other source, public or private, except that the Commission cannot accept a contribution of more than \$5 from any source other than the Town unless the name and address of the person or agency making the contribution and the amount of the contribution are both disclosed in writing and filed with the Town Clerk. 30-A M.R.S.A. § 2103(4)(A).

¹ Section 2103(2) does not take into account that under the provisions of Section 2103(1)(A), the elected members of the Commission may not be elected until well after the appointed members have been appointed. Perhaps the best solution to this potential inconsistency is to elect Commission members at the referendum election, or at a separate election held within 30 days of the referendum election.

Before the Charter Commission terminates, it must file with the Town Clerk a complete account of all its receipts and expenditures for public inspection. 30-A M.R.S.A. § 2103(4)(B). Any balance remaining in the charter commission account must be credited to the Town's surplus account. *Id.*

III. Hearings, Reports and Time Limits:

The Charter Commission must hold its public hearings within the Town, and at the time and places set by the Commission. 30-A M.R.S.A. § 2103(5)(B). At least 10 days before any hearing, the Commission must publish notice of the date, time and place of its hearing in a newspaper having general circulation in the Town. *Id.*

Within 30 Days

Within 30 days after its organizational meeting, the Charter Commission must hold a public meeting to receive information, views, comments, and other material relating to its functions. 30-A M.R.S.A. § 2103(5)(A).

Within 9 Months

Within 9 months after its election, the Charter Commission must:

- (1) Prepare a preliminary report, including the text of the charter revision that the Commission intends to submit to the voters and any explanatory information the Commission considers desirable;
- (2) Have the preliminary report printed and circulated throughout the municipality; and
- (3) Provide sufficient copies of the preliminary report to the Town Clerk to permit its distribution to each voter who requests a copy.

30-A M.R.S.A. § 2103(5)(C).

Within 12 Months

Within 12 months after its election, the Charter Commission must submit its final report to the municipal officers. The final report must include:

- (1) The full text and an explanation of the proposed charter revision;
- (2) Any comments the Commission considers desirable;
- (3) An indication of the major differences between the current and proposed charters; and

- (4) A written opinion by an attorney admitted to the Maine bar stating that the proposed charter revision does not contain any provision prohibited by the United States Constitution, the Constitution of Maine or the general laws.

30-A M.R.S.A. § 2103(5)(D). If members of the Commission decide to issue a minority report, the minority report cannot exceed 1,000 words.

The municipal officers may extend the time limits for both the preliminary and final reports for up to 24 months after the election of the Charter Commission if the extension is necessary to either (1) properly complete the reports; (2) have them printed or circulated, or (3) obtain the written opinion of an attorney. 30-A M.R.S.A. § 2103(5)(E).

IV. Election Concerning Charter Revision:

When the final report is filed, the municipal officers must order the proposed charter revision to be submitted to the voters at the next regular or special municipal election held at least 35 days after the final report is filed. 30-A M.R.S.A. § 2103(6).

At least 2 weeks before the election, the municipal officers must: (1) have the final report of the Charter Commission printed; (2) make copies of the report available to the voters in the Town Clerk's office; and (3) post the report in the same manner that proposed ordinances are posted in Bar Harbor. 30-A M.R.S.A. § 2105(3)(A).

Regardless of the method of voting currently used in Bar Harbor for municipal elections, at the election where the final charter revision will be submitted to the voters, the Town must use the method of voting prescribed in 30-A M.R.S.A. §§ 2528-2532. *Id.* § 2105. Further, the question to be submitted to the voters must, in substance, ask:

“Shall the Town approve the charter revision recommended by the Charter Commission?”

30-A M.R.S.A. § 2105(1).²

V. Effective Date of the Charter Revisions:

If a majority of the ballots cast on the charter revision question favor acceptance, the charter revision will become effective, provided that the total number of votes cast both for and against the question equals or exceeds 30% of the total votes cast in the Town at the last gubernatorial election. *Id.* § 2105(4). The charter revision takes effect on the first day of the next succeeding municipal year, except that charter revisions take effect immediately for the purpose of conducting any election required by the new provisions. *Id.* § 2105(4)(A).

² Section 2103(7) and Section 2105(1) contain additional provisions regarding charter modifications. In the event that the Bar Harbor Charter Commission recommends that the Town's charter undergo only slight modifications rather than a whole-scale revision, the Commission should review the provisions set forth in Section 2103(7) and Section 2105(1) as they relate to charter modifications.

VI. Termination of the Charter Commission:

The Charter Commission must continue in existence for 30 days after submitting its final report to the municipal officers for the purpose of winding up its affairs, except that if judicial review is sought pursuant to 30-A M.R.S.A. § 2108, the Charter Commission must continue in existence until that review and any appeals are finally completed for the purpose of intervening in those proceedings. 30-A M.R.S.A. § 2103(8).

TIMELINE FOR MUNICIPAL CHARTER REVISION



